

MEETING RECORD

NAME OF GROUP: PLANNING COMMISSION

DATE, TIME AND PLACE OF MEETING: Wednesday, May 5, 1999, 1:00 p.m., City Council Chambers, First Floor, County-City Building, 555 S. 10th Street, Lincoln, Nebraska

MEMBERS IN ATTENDANCE: Russ Bayer, Ann Bleed, Barbara Hopkins, Gerry Krieser and Greg Schwinn (Steve Duvall, Cecil Steward, Rick Wallace and Joe Wilson absent); John Bradley, Ray Hill, Mike DeKalb, Steve Henrichsen, Nicole Fleck-Tooze, Jean Walker and Teresa McKinstry of the Planning Department; media and other interested citizens.

STATED PURPOSE OF MEETING: Regular Planning Commission Meeting

Chair, Barbara Hopkins called the meeting to order and requested a motion approving the minutes for the meeting held April 21, 1999. Motion to approve made by Schwinn, seconded by Bayer and carried 5-0: Bayer, Bleed, Hopkins, Krieser and Schwinn voting 'yes'; Duvall, Steward, Wallace and Wilson absent.

CONSENT AGENDA
PUBLIC HEARING & ADMINISTRATIVE ACTION
BEFORE PLANNING COMMISSION:

May 5, 1999

Members present: Bayer, Bleed, Hopkins, Krieser and Schwinn; Duvall, Steward, Wallace and Wilson absent.

The Consent Agenda consisted of the following items: **USE PERMIT NO. 58F; PRELIMINARY PLAT NO. 97035, MEINTS ADDITION; FINAL PLAT NO. 99001, SALT CREEK CENTER ADDITION; COMPREHENSIVE PLAN CONFORMANCE NO. 99004 and STREET AND ALLEY VACATION NO. 99003.**

Item No. 1.2, Preliminary Plat No. 97035, was removed from the consent agenda and scheduled for separate public hearing.

Bleed moved to approve the remaining Consent Agenda, seconded by Bayer and carried 5-0: Bayer, Bleed, Hopkins, Krieser and Schwinn voting 'yes'; Duvall, Steward, Wallace and Wilson absent.

This is final action on Use Permit No. 58F and Salt Creek Center Addition Final Plat No. 99001, unless appealed to the City Council by filing a letter of appeal with the City Clerk within 14 days of the action by the Planning Commission.

PRELIMINARY PLAT NO. 97035
MEINTS ADDITION
ON PROPERTY GENERALLY LOCATED
AT NORTH 23RD STREET & CORNHUSKER HWY.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 5, 1999

Members present: Bleed, Schwinn, Bayer, Krieser and Hopkins; Duvall, Steward, Wallace and Wilson absent.

Planning staff recommendation: Conditional approval, as revised.

Ray Hill of Planning staff submitted a late report from the Health Dept. raising the question about contaminants on the property due to it having been a salvage yard. Staff has met with the applicant's representative and worked out an acceptable agreement, arriving at a new condition #3.2.10: To inform all purchasers and users that an automobile salvage yard previously occupied Lots 2 and 3 and that there may be contaminants in and on the surface of the soil.

Proponents

1. J.D. Burt of Design Associates, testified on behalf of the applicant and agreed with the revised staff report.

There was no testimony in opposition.

Blead noted that this area is covered by the 100 year floodplain and she is curious about allowing building in the 100-year floodplain, although it is allowed by the law. In so doing, to what extent are we increasing the potential flood height in adjacent areas? Nicole Fleck-Tooze of Planning staff advised that the city is trying to address this issue through revisions to the floodplain ordinance. However, this particular plat makes an effort to have as little impact as possible by raising the building pads but not raising the whole lot area. We know that there are hydrological techniques but she does not know that the total volume of fill is noted here. Her recollection is that in comparison with some other plats, this was not one of the worst by any means, but it is a concern and the staff is trying to address this through the regulations.

Blead believes this has the potential of actually increasing the height of the flood waters to some extent. Ms. Fleck-Tooze agreed that anytime you develop in the floodplain you do impact the flood levels. In some of the plats that have come forward associated with a community unit plan, we have had the opportunity to have more discretion in the

conditions. The plat only has to meet the requirements of the subdivision ordinance and this plat does meet those requirements.

Danny Walker requested to address the Commission even though he is out of order. The Commission agreed to allow him to speak. Mr. Walker wanted to be sure that the Commission realizes that this has been a salvage yard area for at least 50 years. And over those years, the city was very negligent in regard to enforcement of pollution and contamination, etc. He would like to know what provisions are going to be made to seal this area. That soil in that area has to be grossly contaminated. He requested that someone from Health advise how these tests are run and what will be utilized to seal off the area. What is going to happen if we get floodwater in this area? There will be contamination coming out of that area.

Rick Peo, City Law Department, advised that everything that can be done at this stage of the process has been done, i.e. putting in the documents that they must inform all future property owners as to the fact that it was a salvage yard and there might be contamination. At the point of actual building or construction, people will have to comply with state, federal and local regulations. If they find contamination, they have to clean it up. Bleed asked if there are requirements to do soil testing to see if there is contamination. Mr. Peo was not aware of any such requirements. Most potential buyers do environmental audits and if there is contamination they do a further test to determine what needs to be done before development. Bleed suggested a scenario where there was contamination of Salt Creek and the contamination was traced to this area because of the salvage yard. Who is liable? Mr. Peo advised that technically, all property owners with a chain of title are looked at. The person causing the pollutant is the primary source, but if you purchase without adequate evaluation you could have some of that liability. Bleed suggested it is a "buyer beware" situation.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 5, 1999

Bayer moved approval of the Planning staff recommendation of conditional approval, as revised, seconded by Schwinn.

Bleed commented that this is a floodplain; there are concerns about flooding occurring, resulting in contamination of Salt Creek; we do not have the legal basis to turn the plat down on that concern at this stage; even if we let it stand, we still have the same problem. With a new owner there is some potential for mitigation and cleanup. She is concerned about the potential for contaminants.

Motion for conditional approval, as revised, carried 5-0: Bleed, Schwinn, Bayer, Krieser and Hopkins voting 'yes'; Duvall, Steward, Wallace and Wilson absent.

CHANGE OF ZONE NO. 3167
FROM R-4 AND R-5 RESIDENTIAL
TO B-3 COMMERCIAL
ON PROPERTY GENERALLY LOCATED
AT SOUTH 49TH STREET AND LOWELL AVENUE.
PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 5, 1999

Members present: Bleed, Schwinn, Bayer, Krieser and Hopkins; Duvall, Steward, Wallace and Wilson absent.

Planning staff recommendation: Denial.

Proponents

1. Mike Rierden appeared on behalf of the applicant. This application is an attempt to change the six lots on Lowell Avenue to bring into conformance with the rest of the zoning that the church has at this point in time. The most important issue is the two lots on the east side of 49th Street. The church received a special permit for a parking lot about a year ago with very restrictive setbacks and that permit could not accommodate the stalls they needed. The additional parking is for the church and for the college. There is an on-street parking problem in the neighborhood. This will get the cars off the street on Saturdays and will allow parking for the college students during the rest of the week. The college and church have grown over the years, demonstrating the need for more off-street parking in this area.

Mr. Rierden believes that the applicant did its due diligence in contacting the neighbors and he submitted a letter dated 10/3/98 which was sent by the Pastor to the neighborhood. Pastor Bock has not received any adverse comments; the neighborhood is fully aware and is in agreement and supports this proposal for the additional parking stalls.

Mr. Rierden noted that the staff suggests the vacation of 49th Street as an alternative, but this would be detrimental to the church, the college and the neighborhood because it would shut off one of the access points. There is a stoplight at 48th & Prescott with a lot of traffic entering that intersection from all directions. A lot of people utilize Lowell and Meredith to get onto 48th. It would create a problem if 49th Street is vacated.

Mr. Rierden also noted that the staff suggests that these two lots encroach into an existing residential neighborhood and they would be commercial in character. Mr. Rierden proposed to place a covenant on the property that those two lots would remain for parking purposes, only, and that this covenant would run to the benefit of the church, the college and the neighborhood. The church has no intentions of doing anything commercial on those lots. This is an attempt to accomplish something for the neighborhood, the church and the college.

Hopkins asked for further explanation as to why the vacating of 49th Street is not an alternative. Mr. Rierden stated it to be a problem of traffic flow. There are access points at Lowell and Meredith, and if we block 49th Street, we may create a traffic problem on Prescott. There is no 50th Street, so he believes it would not be a good idea to vacate 49th Street. The problem is the liability. If the church vacates the street, it becomes their property. If the public has access through it, there is potential for liability, especially if they utilize a portion for parking.

Bleed asked why they can't somehow get the land they need without the setbacks without changing the zone. She is concerned about increasing commercial in a residential area. Mr. Rierden stated that there is no other alternative other than the change to B-3. They have promised to do the covenant with the neighborhood that it would remain a non-commercial type use. This is the only way to accomplish the additional parking as desired.

2. Gene Schober, the contractor for the church, testified that east is the only direction that the church can acquire land and get parking. They now have 3 lots at 150', and they need 120' for a parking lot. They can put some additional parking on the east side—6 spaces—if they can get a smaller setback. They still want to put a 10' green area in. There is more green area on the south side. If they purchased more property to the east in the second stage, then they have 200' and they could put three double-lots in. If they do not have the setback, it will cost 12 spaces, requiring them to buy two lots to the east. The church owns the property to the north, so in the longer range plan it would cost them 24 spaces if this change is not granted.

3. Terry Bock, administrative pastor at the church for 14 years, testified in support. Some years ago, they did put in extra diagonal parking along the church's side of Prescott, on both sides of 49th and their side of Lowell Street. They also put a parking lot in on the west side of the church. The church is growing. In January of 1994, the membership was 1,823. In January of 1999, the membership had grown to 2,014. In addition, Union College to the north is growing. In January of 1997, Union College had 548 students, and in January of 1999, there were 802 students. The real problem is the parking. The number of cars registered at Union College in 1994 was 562 cars; in 1996, 571 cars; and this year there are 798 cars registered at the college. That is taking a fair amount of the parking that they have put in. It is his opinion that on Saturday mornings, the streets get parked full on both sides for several blocks, especially south and east. The neighbors would be more interested in getting some of these cars off the street than seeing more green space with the larger setback along 49th Street.

With regard to vacating 49th Street, Pastor Bock advised that there is an alley in the middle of 49th Street with quite a few garages with storage and vacating 49th Street would have an impact. They do not foresee any plans for commercial building across 49th Street. The real need is parking.

Hopkins asked whether the increase in the number of students has required adding major structures that allow for that growth or have they scheduled more classes at different times of day. Pastor Bock stated that they have not had to add facilities. He believes they had over a thousand students at the college years ago, thus it has not required more buildings. They can handle more student growth at the existing facility.

Hopkins inquired whether any church services have been added or whether they have extended other services to help with the parking situation. Pastor Bock stated that they currently run two worship services with Sabbath school in-between. They have previously had a difficult time convincing more people to go to the earlier worship service. The busiest time is the Sabbath school time at 10:00, which then runs into the second service.

Hopkins commented that Bryan Hospital had a lot of experience with transporting people from satellite sites and wonders if that might be a consideration. Pastor Bock observed that at the present time, the church does not own any vehicles. Purchasing vehicles and insurance is something they had thought about but were in hopes of getting more parking in the near vicinity.

4. Jerome Lang, 4700 Woodhaven Drive, who has been part of the finance committee for the church for about 25 years, testified in support. The church is always interested in being a good neighbor and this is an attempt to explore ways to do that. Off-street parking would be much more of a benefit with this zoning change.

5. Harold Matthes, who owns the property directly east of the zoning area, testified in support; however, his main concern is the possibility of water runoff during heavy periods of rain. He is not opposed if the proper grading and drainage is assured. He wants the church to be required to take the necessary precautions and that Building & Safety require a drainage and grading plan prior to approval. He has owned his property for 20 years and he understands the parking problem. He believes the additional parking would be a benefit to his tenants. The properties that were removed did provide some necessary drainage out onto the street. If this problem is corrected, he would support the change of zone.

There was no testimony in opposition.

Bayer inquired whether there is something that can be done to keep the zoning as is and allow them to use the property for parking. Ray Hill of Planning staff stated that the only other option would be to make application to the Board of Zoning Appeals and seek a variance of the front yard setback, but they would have to convince that board that there is a hardship on them due to the zoning.

Bayer noted that the staff concern is that there is no guarantee that the commercial zoning would be used for parking. Mr. Hill explained that staff had received a special permit for parking on three of the lots along Lowell which staff recommended be approved. This

change of zone is on one of those three lots. Their concern is that the change of zone allows them to reduce the front yard along 49th Street because all frontage is B-3. There is no front yard setback in B-3. Staff is looking at the bigger picture as to what kind of a guarantee there is that it will be parking because it is important to the city to preserve that open space/green space. Because it is in a residential neighborhood, the open space and front yard is important. Special permits do not allow for adjustments to the setback.

Hopkins noted, however, that it's not like they can move the church. They have to have parking if they are going to grow and expand. What other alternatives are there? Mr. Hill stated that he understands the dilemma, but staff is considering what that zoning actually does to the community. They already have parking bays off of 49th Street, and he is not sure how that happened. Maybe there is a way to provide more diagonal parking on 49th Street.

Dennis Bartels of Public Works believes the parking bays were built under an Executive Order. Vacating 49th Street would be acceptable to Public Works, and the parking lot could be continuous from the existing parking lot. The vacating of 49th Street would increase considerably the number of stalls that could be put in the same space because the 49th Street right-of-way could become part of the parking lot with zero setbacks.

Response by the Applicant

Mr. Rierden stated that the whole purpose of this change of zone is to be good neighbors and to cure a problem that, through expansion and growth of the school and church, is growing. They have not canvassed the neighborhood about the vacation of 49th Street. True, the church could provide an easement for access, but there would still be a liability problem. This change of zone is the only alternative in Mr. Rierden's opinion and the church is trying to be a good citizen in getting the cars off the street and provide parking for the college.

Public hearing was closed.

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 5, 1999

Bayer moved approval, seconded by Schwinn.

Bayer commented that the one valid concern is that the change of zone could allow so many other things, but he does not believe the church would want to build commercial 100' from its front door. The church has proven that it has grown; it has been a good neighbor and it works good for the community. He would like to see them get their parking.

Bleed has the same concerns about expanding B-3 but she is well aware that they have made an attempt to contact the neighbors and the neighbors appear to feel that the parking

is more important than the change of zone. She is concerned about existing churches and colleges that are in our built environment getting to the point where they can't exist anymore and move to the outer area. She does not want to see that either. We need to work with these facilities. It is frustrating that the change of zone is the only alternative. She does not like the idea of vacating 49th Street.

Motion for approval carried 5-0: Bleed, Schwinn, Bayer, Krieser and Hopkins voting 'yes'; Duvall, Steward, Wallace and Wilson absent.

COUNTY CHANGE OF ZONE NO. 186

FROM AG TO AGR

ON PROPERTY GENERALLY LOCATED

AT N.W. 120TH & W. FLETCHER AVENUE.

CONT'D PUBLIC HEARING BEFORE PLANNING COMMISSION:

May 5, 1999

Members present: Bleed, Schwinn, Bayer, Krieser and Hopkins; Duvall, Steward, Wallace and Wilson absent.

The Clerk announced that the applicant had submitted a letter requesting an additional two-week deferral of the public hearing in order to complete the water analysis. The inclement weather has delayed the water testing.

Blead moved to defer two weeks, seconded by Krieser. Bayer pointed out that this was brought up at the last meeting. The Commission had suggested a four-week delay, but the applicant wanted only two weeks. The neighbors are here again based upon that discussion, so he will vote against deferral. Bleed wants to know what the water situation is before she does anything.

Motion to defer two weeks failed 2-3: Schwinn and Krieser voting 'yes'; Bleed, Bayer and Hopkins voting 'no'.

Proponents

1. Sherrie Gregory, the applicant, stated that she was unable to control what went on with the weather. As we speak, the trucks are out there and hopefully doing the testing. Mr. Dreezen also wants a full parameter water analysis which takes a week once they get the sample. She is hogtied and is reluctant to come forward without the water information. She believes she has met all objections. She has a neighborhood meeting scheduled for tomorrow night. She has provided additional information. The cleanup goes on; seeding is stalled out—nothing can happen until it dries out. There is no plat being submitted because everything hinges on the water situation, the topography, etc. She cannot show a plan at this time; however, there will not be 26 lots; probably not even 22; more likely 12 to 14, if that, and as few as four.

Bayer believes it is an incomplete project. The applicant is asking the Commission to speculatively zone the property. Why should we even do this now? It is not fair to the neighbors or anyone else because this may not happen. Ms. Gregory offered that the completeness depends on the hydrology studies. Bayer will not support a change of zone without seeing the plat. He has supported AGR zoning but he wants to see the vision for this area along with the change of zone. He asked Ms. Gregory why she can't delay the zone change until the plat is prepared. Ms. Gregory then suggested that she would like to delay the change of zone until she has a plat ready for submittal.

Rick Peo, City Attorney, suggested that if the change of zone is withdrawn, the applicant loses the filing fee and has to refile. The change of zone could be placed on pending until the plat is submitted. It is the applicant's choice as to how to proceed.

Ms. Gregory responded, stating that had she known this was going to be the situation, she would have asked that it be placed on pending. She thought she would be able to have it all together by now. Bayer's perspective is that if you don't have a complete package, he is not comfortable supporting the change of zone. Mr. Peo added that, without a plat, you have to assume maximum development on the change of zone.

Bleed stated that if she were to vote today, even if the water sample was good, she would turn it down.

The applicant requested that the change of zone be placed on pending until she presents a preliminary plat to accompany it and a full study of the water. So moved by Bleed, seconded by Schwinn and carried 5-0: Bleed, Schwinn, Bayer, Krieser and Hopkins voting 'yes'; Duvall, Steward, Wallace and Wilson absent.

Opposition

1. **Lynnette Nelson**, 11402 W. Fletcher Avenue, urged the Commission to vote today so that it can be passed onto the County Board. This would still allow time for the applicant to submit the necessary tests before the County Board. Many of the neighbors have taken time off of work again to attend today's hearing. Water is a concern but there are other issues: They want to see the number of lots; road layout; type of sewer service. The current Comprehensive Plan calls for this area to be zoned AG; the surrounding area is 20 acre parcels except for the Pawnee Lake Subdivision. The AG zoning is compatible with the neighborhood. She thinks the water tests should have been completed prior to requesting this change. Ms. Gregory has been working on this property since early February. The farmers have been in full operation. It concerns her that the water tests have lasted so long. It appears that they keep drilling until they get the results that they want. How would this test look if done in the dryer months? The neighbors would prefer the Commission not delay action. More than 25 people stood in the audience in support of Ms. Nelson's testimony.

Bayer informed the neighbors that the Commission has voted to place the change of zone on pending until a plat is submitted. It will be at least 30 days; the applicant is encouraged to hold a neighborhood meeting; the change of zone and plat will be readvertised and notification letters regarding the Planning Commission hearing will be sent to the neighboring property owners again.

Response by the Applicant

Ms. Gregory reappeared to assure that there is no one here that wants a delay any less than she. But, she is also subject to the well driller's schedule. She has not been able to overcome the driller's schedule or the weather. Hopkins encouraged the applicant to schedule meetings with the neighbors when she has the plat prepared.

This item is placed on the Planning Commission pending list until an associated preliminary plat has been submitted and scheduled for public hearing.

ITEMS NOT APPEARING ON THE AGENDA

May 5, 1999

Members present: Bleed, Schwinn, Bayer, Krieser and Hopkins; Duvall, Steward, Wallace and Wilson absent.

1. Danny Walker submitted a newspaper article from the Omaha World Herald of May 5, 1999, "Maryland Planner Offers Ideas for Controlling Sprawl". Mr. Walker believes that everything seems to be one-sided as far as development goes. The Home Builders and LIBA are really bombing the television networks saying how much good they are doing the city and the older neighborhoods. He is concerned because he wants to hear both sides of the story and this just doesn't seem to be happening in the City of Lincoln.

2. Mike Morosin, past president of Malone Neighborhood Association, appeared and suggested that most of the older neighborhoods are under big pressure, specifically with building along the floodplains and floodways. The Antelope Valley group took a trip to Brush Creek in Kansas City this last week. It was a very nice project. One of their concerns was to make sure they include more neighbors and take a look far upstream in doing some work. Hopefully, as these new subdivisions come in, the Lincoln community can require them to "toe the line" and take a look at the people downstream.

Mr. Morosin expressed appreciation to the commissioners for starting to show some concern for this issue.

Bayer commented that the newspaper article talks about the smart growth that Maryland passed, providing grants to people to build homes near their jobs. Today, this Commission passed the HUD grant program with millions of dollars for housing in older neighborhoods and low income funding. Our Urban Development Department is doing a good job at this.

Danny Walker stated that one problem in his neighborhood is that if you don't have flood insurance, you're redlined and not eligible for the grants. Bayer suggested Mr. Walker take his information to Urban Development and ask for help.

COUNTY CHANGE OF ZONE NO. 184
FROM AG AGRICULTURAL TO
AGR AGRICULTURAL RESIDENTIAL
ON PROPERTY GENERALLY LOCATED
AT STAGECOACH ROAD AND HIGHWAY 77.
ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

May 5, 1999

Members present: Bleed, Schwinn, Bayer, Krieser and Hopkins; Duvall, Steward, Wallace and Wilson absent.

Bayer moved approval. Motion failed for lack of a second.

Bleed moved to deny, seconded by Schwinn.

Bleed agrees with the analysis in the staff report. This is not a good place to change the zone and put in AGR uses. It should remain AG.

Schwinn stated that he is opposed to speculative zoning. Without seeing a plat, he does not want to give the zone change.

Bayer will support the motion in order to get five votes to move the application on to the County Board.

Motion to deny carried 5-0: Bleed, Schwinn, Bayer, Krieser and Hopkins voting 'yes'; Duvall, Steward, Wallace and Wilson absent.

There being no further business, the meeting was adjourned at 2:20 p.m.

Please note: These minutes will not be formally approved until the next regular meeting of the Planning Commission on May 19, 1999.